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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/663,118	09/15/2003	Albert Benjamin Crogan	8746.0 (Crogan)	1840
1342	7590	08/17/2005	EXAMINER	
PHILLIPS LYTLE LLP INTELLECTUAL PROPERTY GROUP 3400 HSBC CENTER BUFFALO, NY 14203-3509			NOLAND, KENNETH W	
			ART UNIT	PAPER NUMBER
			3653	

DATE MAILED: 08/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/663,118	CROGAN, ALBERT BENJAMIN
	Examiner Kenneth W. Noland	Art Unit 3653

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on _____.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-9 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

<ol style="list-style-type: none"> 1)<input checked="" type="checkbox"/> Notice of References Cited (PTO-892) 2)<input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) 3)<input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>11-17-03</u> 	<ol style="list-style-type: none"> 4)<input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ 5)<input type="checkbox"/> Notice of Informal Patent Application (PTO-152) 6)<input type="checkbox"/> Other: _____
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1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 5 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. In regard to this, claim 5 recites a method and provides the apparatus in claim 1. Claim 5 represents a combined process and a machine (apparatus), and is, therefore, not one of the four statutory inventions (process, machine, manufacture or composition of matter).

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bronander in view of Focke et al. Bronander discloses the loading carriage having a divider 8 to divide the loading carriage into a first reservoir A and a second reservoir B. The first and second reservoirs communicate with first and second feed compartments 18 as shown in figure 1. Note the plunger 21 to eject the group of the cigarettes from the first and the second feed compartments. After ejection of the group of twenty cigarettes, is wrapped in a single package (see page 2, lines 32-34). To provide that Bronander's first and second reservoirs would accommodate different types of cigarettes would be obvious in view of the teachings of Focke et al's use of the cigarette loading carriage (magazine), which has feed reservoirs 20-23, which would receive up to three different

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types of cigarettes (see col 3, lines 1-15). The effect of Bronander's reservoirs receiving the different types of cigarettes would provide that the ejected group of cigarettes and therefore the package have a mixture of the different types of cigarettes therein so that a variety of different types of cigarettes may be dispensed from the package. In regard to claims 2,3 and 7, to provide that Bronander's apparatus package such products as cigars or herbal cigarettes, would be obvious as a mere choice of utility to so package any desired product, and, therefore, this utility expedience is not afforded any patentable weight. Finally, in regard to claim 9, to provide that Bronander 's package hold a given amount of the different types of cigarette products would be obvious as a mere choice of utility to so wrap and dispense any desired amount of the types of the cigarette products, and, therefore, this utility expedience is not afforded any patentable weight. . . ***.

4. Manservisi et al is cited showing in figure 5 the use of odd and even numbered stacking of the cigarettes in a package.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth W. Noland whose telephone number is (571) 272-6941. The examiner can normally be reached on Monday-Thursday ,each week.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Donald Walsh can be reached on (703) 306-4173. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

kenw nol 8/8/2005
KENNETH W. NOLAND
PRIMARY EXAMINER